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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,618	11/28/2001	Richard H. Weeks	7118	9254

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SHLESINGER, ARKWRIGHT & GARVEY LLP
300 South Eads Street
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EXAMINER

ESTRADA, ANGEL R

ART UNIT	PAPER NUMBER
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2831

DATE MAILED: 12/18/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/994,618

Applicant(s)

WEEKS, RICHARD H.

Examiner

Angel R. Estrada

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17 and 24-35 is/are allowed.
- 6) ☒ Claim(s) 1-4, 9-13, 18-23 and 36 is/are rejected.
- 7) ☒ Claim(s) 5-8, 14 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 36 are rejected under 35 U.S.C. 102(e) as being anticipated by Currier (US 6,170,685).

Regarding claim 1, Currier discloses a mounting assembly (see figure 1 and 2), comprising: a junction box (10) including a top wall (16) and a downwardly extending side wall (12,14) defining a cavity therein; a fixture support (22) provided on the junction box (10), the fixture support (22) having a first use position (figure 2) and a first non-use position (figure 1); the fixture support (22) being movable about an axis extending transversely relative to the side wall (12); and the fixture support (22) being movable from the first use position (see figure 2) to the first non-use position (see figure 1).

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Regarding claim 2, Carrier discloses the mounting assembly (see figure 1), wherein: the fixture support (22) is rotatable about the axis between the first use position (see figure 2) and the first non-use position (see figure 1).

Regarding claim 3, Carrier discloses the mounting assembly (see figure 1), wherein: a first fixture fastener (see figure 3) is provided on the fixture support (22), the first fixture fastener (see figure 3) being usable for securing a first size of fixture fastener (20) when the fixture support (22) is in the first use position (see figure 3).

Note: It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987). Therefore, this limitation "*being usable for securing a first size of fixture fastener when the fixture support is in the first use position*" has not been given any patentable weight.

Regarding claim 4, Carrier discloses the mounting assembly (see figure 1), wherein: the first fixture fastener (30) includes a female fastener (see figure 3).

Regarding claim 36, Carrier discloses a mounting assembly (see figure 1), comprising: a junction box (10) including a top wall (16) and a downwardly extending side wall (12, 14) defining a cavity therein; a fixture support (22) provided on the junction box (10), the fixture support (22) having a first use position (see figure 2) and a first non-use position (see figure 1); the fixture (22) support being movable about an axis extending transversely relative to the side wall (see figure 2); and the fixture

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support (22) being movable about the transversely extending axis from the first use position (see figure 2) to the first non-use position (see figure 1).

2. Claims 9-13 and 18-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Reiker (US 5,854,443).

Regarding claim 9, Reiker discloses a mounting assembly (see figure 5), comprising: a junction box (112) having a top wall and a downwardly extending side wall defining a cavity therein (see figure 5); a fixture support (121) attached to the junction box (12); a first fixture fastener (see figure 5) provided on the fixture support (121), the first fixture fastener (see figure 5) being sized for securing a first size of fastener (126); a second fixture fastener (130) provided on the fixture support (121), the second fixture fastener (130) being sized for securing a second size of fastener (F); and said fixture support (121) is movable between a use position (see figure 4 and 5) and a non-use position (when the fixture support is released from the box or when the support is adjust to the desire orientation, see column 5 line 24-27).

Note: It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987). Therefore, this limitation "*for the first fixture fastener*" has not been given any patentable weight.

Regarding claim 10, Reiker discloses a mounting assembly (see figure 5), comprising: a junction box (112) including a top wall and a side wall defining a cavity

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therein (see figure 5); a fixture support (121) movably attached (column 5 line 24-27) to the side wall (124); a first fixture fastener (see figure 5) provided on the movable support (121), the first fixture fastener (see figure 5) being sized for engaging a first size of fastener (126); and the fixture support (121) being movable between a use position (see figure 1) and a non-use position (when the fixture support is released from the box or when the support is adjust to the desire orientation, see column 5 line 24-27), the first fixture fastener (see figure 5) being disposed for engaging a first fastener (126) when in the use position (see figure 5).

Regarding claim 11, Reiker discloses the mounting assembly (see figure 5) wherein: a second fixture fastener (130) is provided on the fixture support (121), the second fixture fastener (121) being sized for engaging a second size of fixture fastener (F).

Regarding claim 12, Reiker discloses the mounting assembly (see figure 5) wherein: the size of the first fixture fastener (136) differs from the size of the second fixture fastener (F).

Regarding claim 13, Reiker discloses the mounting assembly (see figure 5), wherein: the first fixture fastener (see figure 5) includes a female fastener (see figure 7).

Regarding claim 18, Reiker discloses a mounting assembly (see figure 5), comprising: a junction box (112) having a top wall (124) and a downwardly extending side wall (114) defining a cavity therein (see figure 5); a fixture support (121) attached to the junction box (112); a first fixture fastener (see figure 5) provided on the fixture

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support (121); a second fixture fastener (130) provided on the fixture support (121); a third fixture fastener (see figure 5) provided on the fixture support (121); and at least one of the first, second, and third fixture fasteners having a use position and a non-use position (see figure 5 and column 5 line 24-27).

Regarding claim 19, Reiker discloses the mounting assembly (see figure 5), wherein: each of the first (see figure 5), second (130), and third fixture fasteners (see figure 5) has a use position (see figure 5) and a non-use position (when the fixture support is released from the box or when the support is adjust to the desire orientation, see column 5 line 24-27).

Regarding claim 20, Reiker discloses the mounting assembly (see figure 5), wherein: when the at least one fixture fastener (see figure 5) is in its use position, at least one of the fixture fasteners (130) is in a non-use position (see figure 5).

Regarding claim 21, Reiker discloses the mounting assembly (see figure 5), wherein: the first fixture fastener (see figure 5) is sized for securing a first size of fixture fastener (126); and one of the second (130) and third fixture fasteners (see figure 5) is sized for securing a second size of fixture fastener (F), the second size of fixture fastener differing from the first size of fixture fastener (see figure 4,5 and 8).

Regarding claim 22, Reiker discloses the mounting assembly (see figure 5), wherein: the fixture support (121) is movable relative to the junction box (when the fixture support is released from the box or when the support is adjust to the desire orientation, see column 5 line 24-27).

Regarding claim 23, Reiker discloses the mounting assembly (see figure 5), wherein: the fixture support (121) is rotatable relative to the junction box (when the support is adjust to the desire orientation, see column 5 line 24-27).

Allowable Subject Matter

3. Claims 5-8, 14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance: The primary reasons for the indication of the allowability of claims 5-8, 14 and 15:

Regarding claims 5-8 is the inclusion therein in combination as currently claimed of the limitation the fixture support including a block.

Regarding claims 14-15 is the inclusion therein in combination as currently claimed of the limitation the fixture support including a block.

These limitations were found in claims 5-8, 14 and 15, and are neither disclosed nor taught by the prior art of record, alone or in combination.

4. Claims 24-35 and 17 are allowed.

The following is an examiner's statement of reasons for allowance: The primary reasons for the indication of the allowability of claims 24-35 and 17 are:

Regarding claim 24-27 is the inclusion therein in combination as currently claimed of the limitation the fixture support including a block; the block including a first

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face and a second face; the first face substantially outwardly away from the top wall when the fixture support is in the first use position; and the second face faces transversely to the top wall when the first face is in the first use position.

Regarding claim 28-31 is the inclusion therein in combination as currently claimed of the limitation the fixture support including a block; the block including a first face and a second face; the first face faces substantially outwardly away from the top wall when the fixture support is in the first use position; and the second face faces substantially outwardly away from the top wall when the fixture support is in a second use position.

Regarding claim 32-35 and 17 is the inclusion therein in combination as currently claimed of the limitation the fixture support including a block; the block including a first face and a second face; the first face substantially outwardly away from the top wall when the fixture support is in the first use position; and the second face faces transversely to the top wall when the first face is in the first use position.

These limitations were found in claims 24-35 and 17, and are neither disclosed nor taught by the prior art of record, alone or in combination.

Response to Arguments

5. Applicant's arguments with respect to claims 1-7, 9-15 and 18-23 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


6. Any inquiry concerning this communication should be directed to Angel R. Estrada at telephone number (703) 305-0853. The Examiner can normally be reached on Monday-Friday (8:30 -5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard can be reached on (703) 308-3682. The fax numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for after final communication.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

AE

December 14, 2002


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